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POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen; ) CIVIL NO. CV03-00385 SOM-LEK  
Plaintiff, ) (Copyright)  
vs. )  
HAWAIIAN EXPRESS SERVICE, ) DECLARATION OF LEX R. SMITH;  
INC., et al., ) EXHIBITS "A" – "K"  
Defendants. )  
)

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DECLARATION OF LEX R. SMITH

I, LEX R. SMITH, under penalty of perjury, state as follows:

1. I am an attorney licensed to practice law before all of the State and Federal Courts in the State of Hawaii and am one of the attorneys representing Defendant POST-CONFIRMATION TRUST for Fleming Companies, Inc. in this case.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Declaration of Mark Dillon, dated August 24, 2001, filed by my office in the matter Berry v. Fleming Companies, Inc., et al., Civil No. CV 01 00446 SPK LEK (the "2001 Lawsuit")

3. Attached hereto as Exhibit "B" is a true and correct copy of the Stipulation for Dismissal of Hawaiian Express, Inc., dated December 11, 2002, filed in the 2001 Lawsuit.

4. Attached hereto as Exhibit "C" is a true and correct copy of Plaintiff Wayne Berry's Memorandum in Opposition to Fleming's Motion for Summary Judgment, filed December 30, 2002 in the 2001 Lawsuit.

5. Attached hereto as Exhibit "D" is a true and correct copy of a December 18, 2002 letter from Plaintiff's counsel to Robert Carson Godbey and copied to myself.

6. Attached hereto as Exhibit "E" is a true and correct copy of an excerpt

from the transcript taken on February 24, 2003 in the 2001 Lawsuit.

7. Attached hereto as Exhibit "F" is a true and correct copy of an excerpt from the transcript of the testimony of Plaintiff Wayne Berry, given on February 25, 2003 in the 2001 Lawsuit.

8. Attached hereto as Exhibit "G" is a true and correct copy of an excerpt from the February 28, 2003 trial testimony of Mark Dillon, in the 2001 Lawsuit.

9. Attached hereto as Exhibit "H" is a true and correct copy of the verdict form from the 2001 Lawsuit.

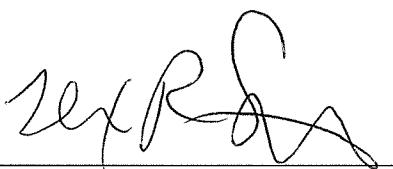
10. Attached hereto as Exhibit "I" is a true and correct copy of excerpts of the trial testimony of Ralph Stussi, given on February 28, 2003 and March 3, 2003 in the 2001 Lawsuit.

11. Attached hereto as Exhibit "J" is a true and correct copy of an excerpt of the trial testimony of Teresa Noa, given on March 4, 2003 in the 2001 Lawsuit.

12. Attached hereto as Exhibit "K" is a true and correct copy of the December 28, 2004 post-trial Order Denying Defendant's Motion for Attorneys' Fees and Granting in Part Plaintiff's Motion for Award of Attorneys' Fees and Full Costs, in the 2001 Lawsuit.

I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information and belief.

DATED: Honolulu, Hawaii, January 23, 2006.

A handwritten signature in black ink, appearing to read "Lex R. Smith", is written over a horizontal line.

LEX R. SMITH